

“Wallace-Mullan Branch Special Account” shall mean the special account established by EPA for (1) the Site pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3), and (2) Consent Decree Case No. 99-606-N-EJL (Aug. 25, 2000) and First Non-Material Modification (Oct. 20, 2000).

“Waste Material” shall mean (1) Mine Waste; (2) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (3) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33) of CERCLA; (4) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (5) any hazardous waste under Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), or hazardous constituent under 40 C.F.R. 266.10; and (6) any “hazardous material,” “hazardous waste,” “solid waste” or “toxic” material under applicable Federal or state law.

“Work” shall mean all activities Settling Defendants are required to fund or perform under this Consent Decree, including but not limited to any activities described in the SOW and funding of the State’s implementation of the BPRP on former railroad rights-of-way within residential yard areas at the Site. “Work” excludes those activities required by Section XVI (Payments for Response Costs) and Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the funding, or the design and implementation, by the Settling Defendants, of response actions at the Site as identified in the EE/CA and the Action Memo in accordance with the SOW, to reimburse response costs of the Plaintiffs, and to resolve the claims of Plaintiffs against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants.

a. Settling Defendants shall fund their pro-rata share of the State’s performance of the BPRP on properties through which former railroad rights-of-way occur within the Site and perform the remainder of the Work in accordance with this Consent Decree, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendants and approved by EPA pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States and the State for Past Response Costs and Future Response Costs as provided in this Consent Decree.

b. The obligations of Settling Defendants to fund the State’s performance of the BPRP on former railroad rights-of-way within residential yard areas at the Site and to perform the remainder of the Work and to pay amounts owed the United States and the State under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one Settling Defendant to implement the requirements of this Consent Decree, the remaining Settling Defendant shall complete all such requirements.

(QA/R-2)” (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA and the State and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall then submit to EPA and the State a list of contractors, including the qualifications of each contractor that would be acceptable to them within thirty (30) days of receipt of EPA’s disapproval of the contractor previously proposed. EPA will provide written notice of the name(s) of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA and the State of the name of the contractor selected within twenty-one (21) days of EPA’s authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure).

11. Funding of BPRP Program for Former Railroad Rights-of-Way Within Residential Yard Areas at the Site. Settling Defendants shall fund their pro-rata share of ^{residential} response costs incurred by DEQ to implement the BPRP on behalf of EPA on ~~properties~~ over which railroad rights-of-way for the Spur Lines formerly existed, according to the following scope and procedures:

a. Not later than ten (10) days prior to commencement of construction on any ^{residential} property subject to the BPRP upon which or over which Spur Line railroad rights-of-way formerly existed, DEQ shall provide Settling Defendants a “construction drawing” depicting the property and specifying those areas within the property determined by the DEQ to be within the FROW.

b. Within ninety (90) days of conclusion of the construction season for each year (December 31), DEQ will provide Settling Defendants’ Project Coordinator with three (3) copies of “record drawings” and field reports, as they are completed and submitted to EPA, showing the completed work and documenting the areal extent of remedial action to be charged to each Settling Defendant.

c. Within ninety (90) days of conclusion of the construction season for each year (December 31), DEQ shall provide the Settling Defendants’ Project Coordinator with three (3) copies of a report detailing the items included in, and the amount of, the BPRP unit cost for the just concluded construction season. At the same time, DEQ shall provide each Settling Defendant with a report for its share of the cost of the BPRP work implemented on the former Spur Line railroad rights-of-way during the just concluded construction season. The report will

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percent (50%) of the Estimated Cost of the Work [i.e., \$3.5 million], provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied;

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of a Settling Defendant, or (ii) a company that has a “substantial business relationship” as defined in 40 C.F.R. § 264.141(h) with at least one Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder;

g. An escrow account whose funds are dedicated to the performance of the Work, with disbursements based on completion of specified activities; or

h. Any other performance guarantee mechanism suggested by Settling Defendants and acceptable to EPA.

If at any time during the effective period of this Consent Decree, the Settling Defendants provide a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 47.e or Paragraph 47.f above, such Settling Defendants shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f) and 40 C.F.R. § 264.151(h)(1) relating to these methods unless otherwise provided in this Consent Decree, including but not limited to (i) the initial submission of required financial reports and statements from the relevant entity’s chief finance officer (“CFO”) and independent certified public accountant (“CPA”), in the form prescribed by EPA in its financial test sample CFO letters and CPA reports available at: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/fa-test-samples.pdf>; (ii) the annual re-submission of such reports and statements within ninety (90) days after the close of each such entity’s fiscal year; and (iii) the prompt notification of EPA after each such entity determines that it no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1) and in any event within ninety (90) days after the close of any fiscal year in which such entity no longer satisfies such financial test requirements. For purposes of the Performance Guarantee method specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to “closure,” “post-closure,” and “plugging and abandonment” shall be deemed to refer to the Work required under this Consent Decree, the terms “current closure cost estimate,” “current post-closure cost estimate,” and “current plugging and abandonment cost estimate” shall be deemed to refer to the Estimated Cost of the Work, the terms “owner” and “operator” shall be deemed to refer to each Settling Defendant making a demonstration under Paragraph 47.e, and the terms “facility” and “hazardous waste facility” shall be deemed to include the Site.

48. Settling Defendants have selected, and EPA has approved, as an initial Performance Guarantee, a demonstration pursuant to Paragraph 47.e, in the form attached hereto as Appendix E. Within ten (10) days after entry of this Consent Decree, Settling Defendants shall execute or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee legally binding in a form substantially identical to the documents attached hereto as Appendix E and such Performance Guarantees shall thereupon be

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